



<u>Decision Ref:</u>	2022-0239
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Travel
<u>Conduct(s) complained of:</u>	Rejection of claim - cancellation
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns travel insurance.

The Complainant's Case

The Complainant booked a camping holiday for his family to a European destination for **June 2020**. The Complainant incepted a travel insurance policy with the Provider on **10 February 2020**. The Complainant asserts that due to COVID-19 travel restrictions, his family could not travel, and he made a claim on his travel insurance policy.

The Complainant states that the Provider failed to refund hotel and campsite costs associated with the travel cancellation in **June 2020**, including €360.00 (three hundred and sixty euro) in hotel costs, €67.00 (sixty seven euro) campsite accommodation, and a 10% non-refundable deposit. The total figure claimed is **€427.00** (four hundred and twenty seven euro).

The Complainant states that he is *"of the view that the insurance provider has taken an unfairly narrow interpretation of the policy in respect of cancellation due to COVID-19 restrictions"*.

The Complainant contends that the Provider's decision not to admit the claim, is not in keeping with the spirit of the Central Bank's "directive" dated **27 March 2020** which states that *"insurance firms are required to take account of the challenging situation in which many of their customers find themselves and to put forward consumer-focused solutions for insurance payment breaks, policy rebates and claims in light of the emergency"*.

The Complainant contends that the policy wording does not exclude COVID-19 or equivalent claims. The Complainant states that the policy wording allows claims where *"your inability to commence travel"* is affected, and, as per this definition, the Complainant affirms that his cancellations were necessary and unavoidable because of the Department of Foreign Affairs' contemporaneous advice on foreign travel, and the cancellation of his booked flights by the flight operator.

The Complainant wants the Provider to pay his claim of €427.00 (four hundred and twenty seven euro) *"plus an additional €100 for [his] considerable time in pursuing this complaint through [the Provider's] own internal complaint processes and now through the FSPO's processes"*.

The Provider's Case

By way of letter dated **26 June 2020**, the Provider stated in response to the Complainant's claim that *"it is with regret that we must inform you that your policy does not provide cover for Cancellation of a trip or holiday as a result of travel advice from the Department of Foreign Affairs to avoid all but essential travel. We are therefore not in a position to offer cover for your claim"*.

In its Final Response Letter dated **21 August 2020**, the Provider stated that it would like to start by expressing its *"regret for the delay in responding to [the Complainant's] complaint; we have been severely impacted as a result of the ongoing COVID-19 crisis and [the Provider] is sorry"*. The Provider further stated that the Complainant's policy provides cover against pre-defined circumstances known as insured perils, and that when it receives a claim, it must examine if the claim arises in respect of an insured peril.

In making this assessment, the Provider submits that the Complainant's policy does not provide for cover for trip cancellation, as a result of travel restrictions recommended by the Department of Foreign Affairs, flight cancellation by an airline, or prohibitive regulations by the government of any country being travelled to.

The Provider states that the Complainant's policy covers cancellations in the instances of six insured perils only, details of which are set out below.

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The Provider states that the exclusions under the policy, include *“prohibitive regulations by the Government of any country to which are you are [sic] travelling, or delay or amendment of the booked Trip due to Government action”*.

The Provider however states that while the Complainant contends that this exclusion does not apply in the circumstances of his claim, *“whether this is cited or not is immaterial to the claim assessment because there is simply no section of this policy that would provide cover for the cancellation of a trip, for any reason, outside of the six perils listed in the cancellation section”*. Likewise, the Provider states that the Complainant’s reference to the *“inability to commence travel”* refers to the six insured perils, which the Provider contends do not apply to the Complainant’s claim.

The Provider, referring to a Central Bank of Ireland statement in respect of where ambiguity may exist in the interpretation of a term in a policy, states that *“where ambiguity exists, [it] would and does apply the most favourable interpretation for customers”*. The Provider contends that, in this instance, there is no ambiguity in the policy terms and conditions and exclusions relating to its decision.

The Provider made submissions in respect of this complaint on **19 November 2021**. The Provider states that it has complied with General Principle 2.6 of the Consumer Protection Code 2012 (as amended) (‘CPC 2012’) in that it has *“made full disclosure of all relevant material information regarding the six insured perils, by informing the customer of same prior to purchase of the policy”*.

The Provider states that it has complied with provisions 7.6, 7.19 and 7.20 of the CPC 2012 in handling the Complainant’s claim in that it endeavoured to *“verify the validity of the Complainant’s claim prior to making a decision on its outcome”*, requested relevant information from the Complainant, provided the Complainant with the reason for its declination of the claim and provided details of the appeals mechanism to the Complainant.

The Provider re-iterates that *“as none of the listed perils applied to the circumstances of the claim, we could not provide cover for the Complainant’s loss”*.

In response to the Complainant’s submission that he is covered for *“inability to commence travel”*, the Provider states that this should be read in context of the entirety of the relevant policy provision which refers to inability to travel *“as a result of any of the following events”* with the ‘following events’ being the six insured perils already stated above.

The Provider refutes the allegation that it has taken a narrow interpretation of the policy terms in the context of COVID-19 related restrictions and states that it does not believe that there is *“any ambiguity in the policy terms, conditions or exclusions”* and that the policy does not provide cover for trip cancellation outside of the six insured perils.

The Provider states that the relevant timeline for the complaint is as follows:

- **26 June 2020:** Complaint received
- **02 July 2020:** Acknowledgment letter issued
- **24 July 2020:** 20-day follow up letter issued
- **21 August 2020:** Final Response Letter issued

The Provider has not been able to provide the original acknowledgement or follow-up letter and while it states that it does not believe that it has failed to comply with General Principle 2.8 or provision 10.9 of the CPC 2012, it wishes *“to offer as a gesture of [our] goodwill, the sum of €200 to the Complainant”*. The Provider states that the Final Response Letter which it issued to the Complainant was not amended to correctly reflect the Complainant’s timeline and therefore it inadvertently apologised for a delay in responding to the Complainant’s complaint.

The Complaint for Adjudication

The complaint is that the Provider wrongfully refused to admit and pay the Complainant’s claim on his travel insurance policy in **June 2020**.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider’s response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision, I have carefully considered the evidence and submissions put forward by the parties to the complaint. Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

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A Preliminary Decision was issued to the parties on **29 June 2022**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter. In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

The Complainant's policy was purchased online, and I note the Provider's evidence which I accept, that the Complainant was required before proceeding, to confirm that he had read and accepted the policy terms and conditions. The policy had a start date of **9 February 2020**.

I note that on **18 June 2020**, the Complainant emailed the Provider enquiring as to which claim form he should complete in respect of a "Covid-19 Government Travel Advisory – for hotel accommodation in Italy not utilised".

On **23 June 2020**, the Provider responded requesting further information from the Complainant and the Complainant responded on the same date. I note that the Provider points to the following provisions of the policy, which provider that:

"Section 1 – Cancellation and Curtailment Charges

*We will cover you up to the amount shown on Your Schedule of Cover per Insured Person in total under this cover for financial loss suffered by You during the Period of Insurance, being nonrefundable deposits and amounts You have paid (or have contracted to pay), for travel to/from Your holiday destination and accommodation You do not use **because of Your inability to commence travel or You curtail the Trip as a result of any of the following events** occurring after payment of premium relating to Your cover (and at the time of booking Your Trip in respect of an annual multi-trip cover) and occurring within the Period of Insurance. Your cancellation or Curtailment must be necessary and unavoidable in order for You to claim.*

These provisions are then followed by the following:

"Cancellation

- *The death, bodily injury, illness of you, your travelling companion, any person whom you have arranged to reside temporarily during your trip, your close relative or your close business associate*

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- *If you become pregnant after we have sold you this cover, and you will be more than 32 weeks pregnant (or 24 weeks if you know you are having more than one baby) at the start of or during your trip. Or your doctor advises that you are not fit to travel because you are suffering from complications of pregnancy or childbirth*
- *Compulsory quarantine, jury service attendance or being called as a witness at a court of law or your travelling companion;*
- *Redundancy (which qualifies for payment under the current Irish redundancy payment legislation and at the time of booking the trip there was no reasons to believe anyone would be made redundant) of you or your travelling companions);*
- *You or any person with whom you are travelling or have arranged to travel with are a member of the Armed forces, Garda, Police, Fire, Nursing or Ambulance Services or employers of a Government Department and have your/their authorised leave cancelled or are called up for operational reasons provided that such cancellation or curtailment could not reasonably have been expected at the time when you purchased this insurance or at the time of your trip;*
- *In the event of burglary at your home within 48 hours of your departure or the police requesting you to return to your home due to serious damage to your home caused by fire, aircraft, explosion, storm, flood, subsidence, malicious persons or theft.”*

Based on the terms of the policy as outlined above, it is clear that the policy sets out six specific insured perils covered, in the event of cancellation. I accept that the reason for the Complainant cancelling his trip, does not fall within the parameters of any of those particular six insured perils. While I note the Central Bank of Ireland statement in respect of where ambiguity may exist in the interpretation of a term in a policy, I do not accept that any such ambiguity is present in these policy terms and conditions.

General principle 2.1 of the CPC 2012 states that a Provider must ensure that it *“acts honestly, fairly and professionally in the best interests of its customers and the integrity of the market”* and general principle 2.2 states that a Provider must ensure that it *“acts with due skill, care and diligence in the best interests of its customers”*. There is no evidence before me to indicate that the Provider has not acted in accordance with these general principles.

Provision 7.6 of the CPC 2012 states that *“a regulated entity must endeavour to verify the validity of a claim received from a claimant prior to making a decision on its outcome.”*. Provision 7.19 of the CPC 2012 states that *“if the regulated entity decides to decline the claim, the reasons for that decision must be provided to the claimant on paper or on another durable medium.”* Provision 7.20 of the CPC 2012 states that *“a regulated entity must provide a claimant with written details of any internal appeals mechanisms available to the claimant”*.

In this regard, I note that the Provider attempted to “*verify the validity of the Complainant’s claim prior to making a decision on its outcome*”, requested relevant information from the Complainant, provided the Complainant with the reason for its declination of the claim and provided details of the appeals mechanism to the Complainant. Therefore, I do not find any evidence of breach of provision 7.6, 7.19 or 7.20 of the CPC 2012 by the Provider.

General principle 2.8 of the CPC 2012 states that a Provider must ensure that it “*corrects errors and handles complaints speedily, efficiently and fairly*”. Provision 10.9 (a) states that “*the regulated entity must acknowledge each complaint on paper or on another durable medium within five business days of the complaint being received*”. Provision 10.9 (b) states that “*the regulated entity must provide the complainant with the name of one or more individuals appointed by the regulated entity to be the complainant’s point of contact in relation to the complaint until the complaint is resolved or cannot be progressed any further*”.

Provision 10.9 (c) states that “*the regulated entity must provide the complainant with a regular update, on paper or on another durable medium, on the progress of the investigation of the complaint at intervals of not greater than 20 business days, starting from the date on which the complaint was made*”. I note that the Provider acknowledged the complaint within five business days of the complaint being received and therefore adhered to provision 10.9(a).

I further note that the Provider issued its Final Response Letter within 7 weeks of the complaint being received and therefore I accept that it handled the complaint speedily, efficiently and fairly.

I note that the Provider accepts that it cannot supply proof of its acknowledgment letter or 20-day follow up letter and therefore, in the absence of appropriate evidence, it is unclear whether the Provider met the requirements of Provisions 10.9(b) and 10.9(c). I note that, in those circumstances, the Provider has offered a sum of **€200.00** (two hundred euro) as an offer of goodwill to the Complainant.

Based on the foregoing acknowledgment by the Provider, and the very minor breaches of CPC 2012 and on the basis that the offer of €200.00 (two hundred euro) was made available by the Provider when sending its formal response to the investigation of this complaint in **November 2021**, and this is still available to the Complainant for acceptance, I do not consider it necessary or appropriate to uphold the complaint. Rather, it will be a matter for the Complainant to make direct contact with the Provider if he wishes to accept that compensatory measure.

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Accordingly, in circumstances where I do not accept that the Provider wrongfully declined the Complainant's claim, I take the view that it is not appropriate to uphold this complaint.

Conclusion

My Decision, pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



MARYROSE MCGOVERN
Financial Services and Pensions Ombudsman (Acting)

21 July 2022

PUBLICATION

Complaints about the conduct of financial service providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish legally binding decisions** in relation to complaints concerning financial service providers in such a manner that—

- (a) ensures that—
 - (i) a complainant shall not be identified by name, address or otherwise,
 - (ii) a provider shall not be identified by name or address,and
- (b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

Complaints about the conduct of pension providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension providers in such a manner that—

- (a) ensures that—
 - (i) a complainant shall not be identified by name, address or otherwise,
 - (ii) a provider shall not be identified by name or address,and
- (b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

